IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2543 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ASHWINBHAI SHAH
Versus
GUARAT POLLUTION CONTROL BOARD

Appearance:
1. Special Civil Application No. 2543 of 2001
MR MIHIR H JOSHI for Petitioner No. 1
MR HARISH J.TRIVEDI for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE H.H.MEHTA

Date of decision: 31/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

Rule. Mr. Harish J. Trivedi, learned counsel waives service of notice of rule on behalf of the respondent. Having regard to the facts of the case, the petition is taken-up for final hearing today.

2. By filing this petition under Article 226 of the Constitution, the petitioner has prayed to quash and set aside order dated March 23, 2001 passed by the Environmental Engineer, Gujarat Pollution Control Board by which consent applied for vide application no. 38077 is refused and prayer made in letter dated November 10, 2000 for bringing into use an outlet for the discharge of trade effluent from the factory of the petitioner is rejected. The petitioner has further prayed to quash and set aside directions dated March 30, 2001 issued by Environmental Engineer,Gujarat Pollution Control Board under section 33-A of the Water (Prevention and Control of Pollution) Act, 1974 (for short "Water Act") by which the petitioner is prohibited from manufacturing Potassium Acetate and Calcium Acetate, and to close the operation of the industrial plant. The petitioner has also prayed to quash and set aside order dated June 30, 2001 passed by the Environmental Engineer, Gujarat Pollution Control Board by which prayer made by the petitioner to grant 'no objection certificate for change in quantity of products at the petitioner's existing Unit is rejected.

3. The petitioner is the sole proprietor of a firm known as 'M/s. Akshay Inorganics'. The firm is engaged in the business of manufacturing Potassium Acetate and other two products at its factory situated at Panoli, District : Bharuch. On March 11, 1993, the petitioner had applied for 'no objection certificate, for setting up an industrial plant at Panoli for the manufacture of said product and the respondent had granted 'no objection certificate' on May 11, 1993. Thereafter the petitioner had applied for site clearance certificate which was also granted by the respondent on March 31, 1995. The petitioner had made an application no. 13282, dated nil for consent under the provisions of the Water Act for manufacturing three products viz. (a) Potassium Acetate,(b) Sodium Acetate, and (c) Calcium Acetate. The consent was neither granted nor refused and, therefore, was deemed to have been granted unconditionally on the expiry of period of four months of making of the application to the Board. On grant of deemed consent, the Board issued necessary directions by serving notice dated May 31, 1997, which is produced at Annexure-C to the petition. By the said notice, deemed consent was also revoked and the petitioner was directed to make

fresh application for consent. Accordingly, applications were submitted from time to time by the petitioner, but they were rejected on the ground, inter-alia,that effluent treatment plant was not being operated efficiently and that the analysis report of the sample collected during monitoring indicated that the effluent quality was not meeting with the prescribed standards as well as on the ground that the petitioner was not entitled to consent in view of the directions of the High Court issued on October 21, 1999 in Special Civil Application No. 4473/97. The order dated March 23, 2001 passed by the Environmental Engineer of the Board indicates that the application for consent was rejected because the Unit of the petitioner did not obtain consent under the Water Act, 1974 on or before October 21, 1999 and that new production was not allowable as per the directions of the High Court dated October 21, 1999 issued in Special Civil Application No. 4473/97. Further directive dated March 30, 2001 issued under section 33-A of the Water Act makes it evident that consent was not granted,inter-alia,on the ground that during the inspection of the industrial plant it was noticed that the petitioner had failed to provide connection between ETP unit for waste water treatment and fresh water addition was going on in collection/neutralisation tank. The order dated June 30, 2001, which is produced at Annexure-P1 to the petition indicates that the request made by the petitioner to grant 'no objection certificate' for change in quantity of the product was rejected, as the unit was likely to cause water pollution and that unit had not complied with the directives of the Board issued on March 30, 2001. The case of the petitioner is that the petitioner's unit is an existing industry and not a new industry and as the petitioner's unit is a zero discharge unit, the directions dated October 21, 1999 issued by the High Court in Special Civil Application No. 4473/97 are not applicable at all. Under the circumstances, the petitioner has filed present petition and claimed reliefs to which reference is made earlier.

4. On service of notice, Mr. R.G.Shah, Environmental Engineer of Gujarat Pollution Control Board, Gandhinagar has filed reply affidavit controverting the averments made in the petition. In the said reply, it is, inter-alia, mentioned that during monitoring of the unit on January 31, 1997 it was found that the unit was engaged in manufacturing without prior permission of the Board as well as without adequate facilities for treatment of effluent to render its quality to the standards specified and, therefore, the

reliefs claimed in the petition should not be granted. Further it is claimed in the reply that the petitioner's unit is a new industry within the meaning of judgment dated October 21, 1999 rendered in Special Civil Application No. 4473/97 and as the petitioner's unit has failed in its attempt to convince the Board pertaining to manufacture of additional new products without adequate ETP and non-compliance of NOC conditions, the petition should be dismissed.

5. We have heard the learned counsel for the parties and taken into consideration the documents forming part of the petition. From the contents of notice dated May 31, 1997 issued by the Environmental Engineer of the Gujarat Pollution Control Board, which is produced at Annexure-C to the petition, it is manifest that on the date of issuance of notice, the petitioner's industry was manufacturing (a) Potassium Acetate, (b) Sodium Acetate and (c) Calcium Acetate, and was an existing industry. Under the circumstances, we are of the opinion that the directions dated March 21, 1999 issued by the High Court in Special Civil Application No. 4473/97 would not apply to the petitioner's unit and consent applied for could not have been rejected on the ground that the petitioner's unit was a new industry in view of the directions issued by the High Court in the said petition. Further the record of the case shows that the unit is a zero discharge unit and the drainage connection of the petitioner-unit was disconnected on March 23, 2001 as per the request of the petitioner because the petitioner's unit is a zero discharge unit. This is quite evident from the contents of letter dated March 28, 2001 issued by the Deputy Executive Engineer, G.I.D.C. Panoli to the petitioner, which is produced at Annexure-P to the petition. The petitioner has also made averments on oath in Paragraphs 7, 9 & 12 of the petition that the unit of the petitioner is a zero discharge unit, which are not effectively dealt with in the affidavit-in-reply filed by Mr. R.G.Shah. We may state that Mr. R.G.Shah has filed additional affidavit-in-reply and produced inspection report along with it. The inspection report indicates that from the process undertaken by the petitioner for manufacturing the above-referred to three products, waste water is not generated. Therefore, the petitioner's unit being a zero discharge unit, could not have been denied the consent or no objection certificate on the ground that directions dated October 21, 1999 issued by the High Court in Special Civil Application No.4473/97 are applicable to the petitioner's unit. Under the circumstances, we are of the opinion that prayers made in the petition deserve to be granted and appropriate

directions should be issued to the respondent to reconsider the application for consent as well as the application for change in quantity of the products, on merits without being influenced by the directions of the High Court issued on October 21, 1999 in Special Civil Application No. 4473/97.

For the foregoing reasons, the petition partly succeeds. The order dated March 23, 2001 passed by the Environmental Engineer of the Board refusing consent applied for by the petitioner vide application no.38077 is hereby set aside and quashed. So also, the direction dated March 30, 2001 issued by the Board under section 33-A of the Water Act is also set aside and quashed. Finally, order dated June 30, 2001 rejecting prayer made by the petitioner to grant 'no objection certificate' for change in quantity, which is produced at Annexure-P1 is also set aside and quashed. The respondent-board is directed to consider the consent application no.38077 as well as application dated April 9, 2001 submitted by the petitioner for change in quantity, on merits after treating the petitioner's unit as a zero discharge unit and without being influenced by the directions dated October 21, 1999 issued by the High Court in Special Civil Application No. 4473/97 as early as possible and preferably within one month from the date of receipt of the writ.

We may state that while issuing direction dated March 30, 2001, the Board had also directed the concerned authority to stop the supply of electricity and water till further orders, but pursuant to oral directions given by the Court, electric supply was not disconnected, but water supply was disconnected. Therefore, we direct the respondent to restore the water supply to the petitioner's unit immediately.

Rule is made absolute accordingly with no orders as to costs.

(J.M.Panchal,J.) (H.H.Mehta,J.)